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HIGH COURT OF CHHATTISGARH AT BILASPUR

Writ Petition (C) No. 2315 of 2007

Petitioner — Durgesh Singh Thakur

Versus

Respondents — State of C.G. and others

Post for order on 16th April, 2007

Sd/-
Satish K. Agnihotri
Judge

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HIGH COURT OF CHHATTISGARH AT BILASPUR

Writ Petition (C) No. 2315 of 2007

Petitioner Durgesh Singh Thakur S/o Pitanjay Singh Aged about 40 years Working in Zila Sahkari Bank Branch Chhuiekhadan Tehsil-Chhuiekhadan Dist- Rajnandgoan (C.G.)

Versus

Respondents

1. State of C.G] Through SHO Police Station- Khairagarh Dist-Rajnandgoan (C.G.)
2. Sashikala W/o Mangal Yadav Aged about 35 years R/o Bazar Attaria, Tehsil- Khairagarh, Dist-Rajnandgoan At- present at Chhuiekhadan Tehsil- Chhuiekhadan Dist- Rajnandgoan (C.G.)
3. Deepak (Minor) S/o Mangal Yadav Aged about 3 years R/o Bazar Attaria
4. Pinku (Minor) S/o Mangal Yadav Aged about 2 years

   Both are Through Mother Sashikala, R/o-At-present at Chhuiekhadan Tehsil- Chhuiekhadan Dist-Rajnandgoan (C.G.)

Single Bench: Hon'ble Mr. Justice **Satish K. Agnihotri.**

Writ Petition under Article 227 of the Constitution of India

Present: Mr. G.S. Ahluwalia, Advocate for the petitioner.
Miss Deepali Pandey, Panel Lawyer for State/respondents No. 1.

ORDER

(Passed on 16th Day of April, 2007)

1. By this petition, filed under Article 227 of the Constitution of India, the petitioner seeks for a writ in the nature of certiorari, quashing the order dated 3.2.2007 (Annexure P-4), passed by the Additional Session Judge,

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Khairagarh in Criminal Revision No. 106/2006 and further the petitioner be not be directed to go for deoxyribonucleic acid (D.N.A.) test.

2. The brief facts, in nutshell, are that, according to the petitioner, the petitioner has no relation with the respondent No. 2, who claimed to be wife of the petitioner. It was further claimed by the respondent No. 2 that the respondents No. 3 and 4 (minor) children were born within the relationship between the petitioner and respondent No. 2. Thus, they are entitled to grant of maintenance under Section 125 of the Code of Criminal Procedure (for short, "Cr.P.C.").

3. In view of the fact that the petitioner has denied relationship and has not cooperated with the case, it was felt necessary to direct the petitioner to face the deoxyribonucleic acid (D.N.A.) test.

4. Learned trial Judge, while hearing an application for deoxyribonucleic acid (D.N.A.) test filed by the respondent No. 2, held that the respondent No. 2 had failed to produce any documents to establish that the respondents No. 3 and 4 are their children. The respondent No. 2 is not a legally wedded wife, thus, she was not entitled to grant of maintenance. The respondents No. 3 and 4, who are allegedly the children of the petitioner and the respondent No. 2, may be granted maintenance under the provisions of 125 of the Code of Criminal Procedure.

5. Learned trial Judge in Criminal Revision No. 106/2006 after hearing both the parties at length vide order dated 3.2.2007 (Annexure P-4) held that in absence of any documents to prove the factum of the relationship between the petitioner and the respondent No. 2 and further birth of the

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respondents No. 3 and 4 from their relationship, it was necessary to direct the petitioner to undergo for deoxyribonucleic acid (D.N.A.) test. Even otherwise, if the petitioner is innocent, petitioner should be ready to face D.N.A. test to prove his innocence. The petitioner is strongly opposed to D.N.A. test.

6. This Court while considering the same issue in ***Sharik Ahmad (Advocate) Vs. Sundar Lal,*** W.P. (C) No. 1010 of 2007, decided on 12th March, 2007, held as under:-

> "9. The paternity of the child can be proved from other evidences from the fact that both the persons were having physical relations, when Kiran Bai conceived and a child was born during that period, as a result of their relationship. This is for a person who is interested in denying the factum of physical relations and birth of a child during that period to rebut the allegation of the mother of the son. Applying the well settled principles of law, to the facts of the present case, it appears that the Court below has not examined the paternity on the basis of other evidences before directing DNA test."

6. In view of that, this petition is partly allowed to the above extent. The matter is remitted back to the Court of the Additional Session Judge, Khairagarh with a direction to decide the issue on the basis of other evidences before passing a direction for deoxyribonucleic acid (D.N.A.) test.

Consequently, I.A. No. 01, application for grant of ad-interim relief, stands disposed of.

Sd/-
Satish K. Agnihotri
Judge

Subhash